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Osha & May, LLP
1221 McKinney Street
Suite 2800
Houston, Texas 77010

In re Application of :
BOUILLOUX-LAFONT et al. :
U.S. Application No.: 10/511,772 : DECISION ON PETITION
PCT No.: PCT/EP03/50120 : UNDER 37 CFR 1.47(a)
Int. Filing Date: 22 April 2003 :
Priority Date: 23 April 2002 :
Attorney Docket No.: 11345/049001 :
For: CHAT FOR TELEVISION NETWORK

This decision is in response to applicants' "Renewed Petition under 37 CFR 1.47(a)" filed 27 April 2006 to accept the application without the signature of joint inventors, Helene Bouilloux-Lafont, Issam Aglan, and Herve Lamaitre.

BACKGROUND

On 22 April 2003, applicants filed international application PCT/EP03/50120 which claimed a priority date of 23 April 2002. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 23 October 2004.

On 19 October 2004, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an application data sheet.

On 06 April 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring an oath or declaration. The notification set a two-month time limit in which to respond.

On 07 November 2005, applicants filed a Petition under 37 CFR 1.47(a) and a five-month extension of time. In a decision dated 21 December 2005, applicants' petition under 37 CFR 1.47(a) was dismissed without prejudice.

On 03 February 2006, applicants filed a renewed petition under 37 CFR 1.47(a). In a decision dated 28 February 2006, applicants' renewed petition under 37 CFR 1.47(a) was dismissed without prejudice.

On 27 April 2006, applicants filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the nonsigning joint inventor. Items (1), (3) and (4) have been satisfied.

As to item (2), petitioner states that Helene Bouilloux-Lafont, Issam Aglan, and Herve Lamaitre cannot be found or reached after diligent effort. Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

A review of the present petition reveals that petitioner has not provided an acceptable showing that a diligent effort was made to locate the nonsigning inventors, Helene Bouilloux-Lafont, Issam Aglan, and Herve Lamaitre. The declaration of Frederique Dersoir states that "in an attempt to locate the nonsigning inventors, I contacted NDS. . .to indicate whether any of the non-signing inventors were employed by NDS. . .I received a response from Frederique Durand that none of the nonsigning inventors worked for NDS." However, the statements made with regards to the efforts to reach the nonsigning inventors constitute secondhand knowledge, in that the actions to which the declarant is averring to were conducted by Frederique Durand. Further, the declaration of Frederique Dersoir fails to include evidence to determine the possible whereabouts of the missing inventors. In this case, a diligent effort may be a search of the Internet and/or telephone directories to determine if Helene Bouilloux-Lafont, Issam Aglan, and Herve Lamaitre have a forwarding correspondence address, electronic-mail address; and/or telephone number.

As stated above, copies of documentary evidence such as internet searches, certified mail return receipt, cover letter of instructions, telegrams, etc., should be supplied by a person having firsthand knowledge of the facts. All documents should be translated into English.

For the reasons stated above, it would not be appropriate to accept the application without the signature of Helene Bouilloux-Lafont, Issam Aglan, and Herve Lamaitre under 37 CFR 1.47(a) at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to:
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: 571-272-3298
Fax: 571-273-0459